

REMARKS/ARGUMENTS

In response to the above identified Office Action, the Applicants submit the following remarks. The Applicants have not cancelled, added or amended any claims. Accordingly, claims 1-6 and 8-33 remain pending in the application of which claims 12-33 have been withdrawn from consideration.

I. Claims Rejected Under 35 U.S.C. § 103

Claims 1-6 and 8-11 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,937,992 issued to Benda, et al. (hereinafter “Benda”) in view of U.S. Patent Publication No. 2003/0014286 by Cappellini (hereinafter “Cappellini”) in view of U.S. Patent No. 3,970,832 issued to Itschner (hereinafter “Itschner”). The Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness the Examiner must show that the combined cited references teach or suggest each of the elements of the claim. In regard to claim 1, this claim includes the elements “evaluating a shipping rule including a constraint for the shipment *during the simulating*” (emphasis added). The Examiner acknowledges that Benda fails to teach or suggest this element of claim 1. The Examiner then relies on Cappellini to teach this element of claim 1 citing paragraphs [0170] and [0188] of Cappellini in support of this position. However, paragraph [0170] discusses the operation of the scheduling sub-system and scheduling systems, generally. Thus, this paragraph is unrelated to the evaluation of shipping rules during simulation. Paragraph [0188] in its entirety states “[p]ackages can be loaded with bottom support on the one side higher than on the other side (that is, slightly tilted).” The Examiner does not provide an explanation as to how this relates to the evaluation of shipping rules during the simulation. The Examiner has not relied upon and the Applicants have been unable to discern any part of Itschner that cures these defects of Benda and Cappellini. Thus, the Examiner has not set forth a clear articulation of how the cited references teach or suggest these elements of claim 1.

The claim also includes the elements of “attempting to fill each transport in the set in simulating the loading of the shipment.” The Examiner acknowledges that Benda fails to teach or suggest this element of claim 1. The Examiner relies on Cappellini and cites paragraph [0189] in support of his position. The only part of paragraph [0189] that appears related states “also

various rules can be provided to spread the boxes over multiple containers.” However, there is no further explanation as to what these rules would be or how they would be applied such that they would be equivalent to an attempt to fill each transport in a set during simulation. The Examiner has provided no further explanation as to how the disclosure of paragraph [0189] reads on these elements of claim 1. The Examiner has not relied upon and the Applicants have been unable to discern any part of Itschner that cures these defects of Benda and Cappellini. Therefore, the Examiner has failed to set forth a clear articulation of how these elements are taught or suggested by the cited references.

Claim 1 includes the elements of “detecting a skipping of the range of the constraint and adjusting the simulating of the loading of the shipment in response to the skipping.” The Examiner has admitted that Benda and Cappellini fail to teach or suggest these elements of claim 1. The Examiner relies on Itschner to cure these defects of claim 1 citing col. 2, lines 1-14 in support of this position. However, col. 2, lines 1-14 of Itschner discuss the process of producing a calculation for Koch’s state equation where certain terms of negligible significance are ignored, that is they are not utilized in the calculation of the state equation. The Examiner does not clarify how the omission of insignificant terms of the equation is related to the detection of a skipping of a range. The Examiner states “ignoring (e.g. is interpreted to be skipping) and further simulation...of temperature ranges (e.g. is interpreted to be a range of constraint values that are adjusted based on the skipping).” See page 4 of the final Office Action. The “further” simulation of temperature ranges in Itschner does not reflect adjustment based on the omission of the terms, because the insignificant terms can only be omitted because they have no effect on the outcome of the equation. In other words, the very reason the terms can be omitted is that no adjustment is needed when omitting them due to their insignificance in producing the results of the equation. Therefore, the Examiner has failed to show that Itschner teaches or suggests this element of claim 1.

Further, Itschner is non-analogous art. Itschner is an apparatus and method for “obtaining an electrical signal corresponding to the specific enthalpy of steam,” (Abstract of Itschner) thus it is wholly unrelated to the field of supply chain management of Benda and Cappellini. The Examiner has argued that “one of ordinary skill in the art would be motivated to combine the teachings in order to provide method by which data can be reproduced electrically by simple means of accuracy, sufficient for control purposes in a relatively large range.” See

pages 4 and 5 of the Office Action. The Examiner does not provide any explanation as to what meaning this would have in the context of the supply chain management systems of Benda and Cappellini. Thus, the Examiner does not properly combine Itchner with Benda and Cappellini. See also MPEP§ 2141.01(a) I (“a reference in a field different from that of the Applicants may be reasonably pertinent if there is one which, because of the matter which it deals logically would have commended itself to the inventors’ attention considering his or her invention as whole.”) The Examiner has made no showing that Itchner which is related to obtaining an electrical signal corresponding to the specific enthalpy of stream would have been a reference that “logically would have commended itself to an inventor’s attention” where as here the inventor would have been an individual in the field of supply chain management. Therefore, for each of the reasons set forth above, the Examiner has failed to establish a *prima facie* case of obviousness. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 1 are requested.

Claims 2-6 and 8-11 depend from independent claim 1 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 1, these claims are not obvious over Benda, Cappellini and Itchner. Accordingly, reconsideration and withdrawal of the obviousness rejection of the these claims are requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-33, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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